

1                   IN THE UNITED STATES DISTRICT COURT  
2                   FOR THE WESTERN DISTRICT OF PENNSYLVANIA

3   UNITED STATES OF AMERICA,                   :  
4                   v.                               :   Cr. No. 05-00025 E  
5   LEON F. AKERLY, II                         :

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9                   Change of Plea Hearing in the above-captioned  
10                  matter held on Tuesday, December 6, 2005, commencing  
11                  at 2:30 p.m., before the Honorable Maurice B. Cohill,  
12                  Courtroom A, United States Courthouse, 17 South Park  
13                  Row, Erie, Pennsylvania 16501.

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15  
16  
17   For the United States of America:  
18       Christine A. Sanner, Esquire  
19       Office of the United States Attorney  
      17 South Park Row, Room A330  
      Erie, PA 16501

20   For the Defendant:  
21       Leonard G. Ambrose, III, Esquire  
22       Ambrose Friedman & Weichler  
      319 West 8th Street  
      Erie, PA 16501

23  
24                   Reported by Janis L. Ferguson, RPR  
25                   Ferguson & Holdnack Reporting, Inc.

5 MR. AMBROSE: That is correct, Your Honor. He's  
6 here present today.

7 THE COURT: I'd like everybody to come forward,  
8 please. Will you administer the oath, please.

9

10 L E O N F. A K E R L Y, II, first having

11 been duly sworn, testified as follows:

12

13 EXAMINATION

14 BY THE COURT:

15

16 Q. Would you state your fame for the record, please.

17	A. Leon Akerly.
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18 Q. Okay. And, Mr. Akerly, do you understand that  
19 I've got to ask you a number of questions here? And if at  
20 any time you want to consult with Mr. Ambrose, please say  
21 so, because it's valid -- it's essential to a valid plea  
22 that you understand each question before you answer.

23	Do you understand that?
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24 A. Yes, Your Honor.

25 Q. Okay. Do you understand that now that you have

1 been sworn and your answers to my questions are now being  
2 given under oath, that you would be subject to the penalties  
3 of perjury or of making a false statement if you don't  
4 answer truthfully?

5 A. Yes, I do, Your Honor.

6 Q. What is your date of birth?

7 A. March 13th, 1968.

8 Q. And what is your address?

9 A. 10680 Station Road, Erie, Pennsylvania -- North  
10 East, Pennsylvania. I'm sorry.

11 Q. How far did you go in school?

12 A. I graduated high school.

13 THE COURT: Mr. Ambrose, have you been able to  
14 communicate with your client in the sense that you believe  
15 he understands you and you understand him?

16 MR. AMBROSE: Yes, Your Honor.

17 BY THE COURT:

18 Q. Mr. Akerly, are you currently or have you recently  
19 been under the care of a physician or a psychiatrist?

20 A. No, sir, I haven't.

21 Q. Have you been hospitalized or treated for a  
22 narcotic addiction?

23 A. No, sir.

24 Q. Have you been hospitalized or treated for alcohol  
25 abuse?

1 A. No, sir.

2 Q. Have you ever been hospitalized or treated for any  
3 sort of mental illness?

4 A. No, sir.

5 Q. Are you under the influence of any narcotic drug,  
6 medicine, pills, or alcoholic beverage today?

7 A. No, I am not, Your Honor.

8 Q. Have you taken any drugs, medicine, or pills or  
9 drank any alcoholic beverages in the past 24 hours?

10 A. No, sir.

11 Q. How do you feel physically and mentally right now?

12 A. Pretty good.

13 Q. Do you clearly understand exactly what's happening  
14 here now?

15 A. Yes, sir, I do.

16 THE COURT: Do either of you attorneys have any  
17 doubt as to Defendant's competence to plead at this time?

18 MR. AMBROSE: I have none, Your Honor.

19 MS. SANNER: No, Your Honor.

20 THE COURT: Based upon your answers to the  
21 foregoing questions, we find that the Defendant is competent  
22 to plead.

23 BY THE COURT:

24 Q. Have you had an ample opportunity to discuss your  
25 case with Mr. Ambrose?

1           A.    Yes, sir, I have.

2           Q.    Have you told him all of the facts in connection  
3 with the charges?

4           A.    Yes, sir, I have.

5           Q.    Are you satisfied with the job that he's done for  
6 you?

7           A.    Absolutely, yes.

8           Q.    Before we get into the -- what actually happened  
9 in this case, Mr. Akerly, I want to go over with you just  
10 what your rights would be if this case were to go to trial.

11                   First of all, do you understand that under the  
12 Constitution and laws of the United States, you are entitled  
13 to a speedy and a public trial by a jury on the charges  
14 contained in the indictment?

15           A.    Yes, I understand.

16           Q.    Do you understand that you have the right to an  
17 attorney at every stage of the proceedings in your case, and  
18 that if at any time you can't afford an attorney, one will  
19 be provided for you without charge?

20           A.    Yes, sir.

21           Q.    Do you understand that at your trial, you would be  
22 presumed to be innocent, and the Government would be  
23 required to prove you guilty by competent evidence and  
24 beyond a reasonable doubt to the satisfaction of the Judge  
25 and the unanimous jury?

1 A. Yes, sir.

2 Q. Do you understand that being presumed to be  
3 innocent means that you would not have to prove that you  
4 were innocent?

5 A. Yes, sir.

6 Q. Do you understand that at the trial, the witnesses  
7 for the Government would have to come to court and testify  
8 in your presence, and your attorney or you could  
9 cross-examine the witnesses for the Government, object to  
10 evidence offered by the Government, and offer evidence on  
11 your behalf?

12 A. Yes, sir.

13 Q. Do you understand that at the trial, you would be  
14 entitled to compulsory process to call witnesses; that is,  
15 you could subpoena witnesses and compel them to come to  
16 court to testify for you?

17 A. Yes, sir, I do.

18 Q. Do you understand that at the trial, you would  
19 have the right to testify, if you chose to do so, but you  
20 would also have the right not to testify, and no inference  
21 or suggestion of guilt can be drawn from the fact that you  
22 did not testify?

23 A. Yes, sir.

24 Q. If you do enter a plea of guilty today, do you  
25 understand that you will be waiving your right to a trial

1 and the other rights that I have just described, and there  
2 will not be a trial of any kind, and I will enter a judgment  
3 of guilty and sentence you on the basis of your guilty plea  
4 after considering a presentence report?

5 A. Yes, sir.

6 Q. If you do enter a plea of guilty today, do you  
7 also understand you will have to waive your right not to  
8 incriminate yourself, since I will ask you questions about  
9 what you did in order to satisfy myself that you are guilty,  
10 and you will have to acknowledge your guilt on the record?

11 A. Yes, sir.

12 Q. Do you understand that any statements regarding  
13 the offense that you may have made to the U.S. Attorney  
14 during the course of any plea negotiations could not be used  
15 against you in a trial of this case?

16 A. Yes, sir.

17 Q. Having discussed these rights with you, is it  
18 still your wish to enter a plea of guilty today?

19 A. Yes, it is, Your Honor.

20 Q. I want to go over with you now the indictment and  
21 the possible penalties here, Mr. Akerly. And I take it you  
22 and Mr. Ambrose have discussed the indictment that was filed  
23 here?

24 A. Yes, sir.

25 Q. This charges you with having been convicted in

1 Common Pleas Court of Erie in 1993. You were convicted of  
2 violating the Controlled Substance, Drug, Device, and  
3 Cosmetics Act by committing the crimes of possession with  
4 the intent to deliver and unlawful delivery of drugs. And  
5 in this case, the charge is that you knowingly did possess  
6 in and affecting interstate commerce firearms, as defined in  
7 Title 18, United States Code, Section 921(a)(3). And now  
8 I'm reading from the indictment.

9           You possessed specifically a Beretta .22 caliber  
10 pistol and an SWD Cobray, C-O-B-R-A-Y, Model M-11  
11 9-millimeter pistol, a firearm as defined in Title 18,  
12 United States Code, Section 921(a)(5); specifically, a  
13 Winchester Model 13 12-gauge shotgun, a firearm as defined  
14 in Title 18, United States Code, Section 921(a)(7),  
15 specifically a Ruger, R-U-G-E-R, Model 10/22 carbine .22  
16 caliber rifle.

17           Those are the charges. Do you understand that?

18           A. Yes, sir.

19           Q. Now, I want to go over with you next just what it  
20 is the Government would have to prove if this case were to  
21 go to court.

22           In any criminal case, there are so-called elements  
23 of the crime which the Government has to prove beyond a  
24 reasonable doubt. And the shorthand version of what you're  
25 charged with here is possession of a firearm by a convicted



1 felon. And the Government would have to prove, first of  
2 all, that you have been convicted of a crime punishable by  
3 imprisonment for a term exceeding one year, and that refers  
4 back to the Common Pleas conviction. Secondly, that you  
5 thereafter possessed a firearm. And, third, that the  
6 firearm was possessed in or affecting interstate commerce.  
7 And that means that at some time in its life it had crossed  
8 a state line. Do you understand that?

9 A. Yes, sir.

10 Q. Okay. Now, the penalties here, we concern  
11 ourselves with two kinds of penalties. First of all, what  
12 does the statute say, what does the Criminal Code say about  
13 this crime, and then, secondly, what do the so-called  
14 Sentencing Guidelines have to say.

15 First of all, the statute calls for a term of  
16 imprisonment of not more than 10 years, but if it's  
17 determined that the Defendant has three previous convictions  
18 for a violent felony or serious drug offense or both, then  
19 the term of imprisonment is not less than 15 years, to a  
20 maximum of life in prison, a fine of not more than \$250,000,  
21 and a term of supervised release of three years or five  
22 years, if the -- more than one prior conviction applies.  
23 And, also, the Court has to impose a special assessment of  
24 \$100. We can't waive that. We have to -- have to impose  
25 that.

1                   Now, that's what the statute says. You understand  
2 that?

3           A.    Yes, sir, I do.

4           Q.    Okay. Now, also we have to look at the so-called  
5 Sentencing Guidelines. And the Supreme Court has said that  
6 those guidelines aren't absolutely binding on the District  
7 Courts, but we do have to look to them to get some idea what  
8 the sentence ought to be. Do you understand that?

9           A.    Yes, sir, I do.

10          Q.    Okay. And have you and Mr. Ambrose talked about  
11 how the Sentencing Guidelines might apply in your case?

12          A.    Yes, we have.

13          Q.    I won't be able to determine the Guideline  
14 sentence for your case until after the presentence report  
15 has been completed and you and the Government have had an  
16 opportunity to review it, and if there's anything in there  
17 that you disagree with, you'll have an opportunity to  
18 challenge that. Do you understand that?

19          A.    Yes, sir.

20          Q.    Do you understand that the sentence might be  
21 different from what either your attorney or the United  
22 States Attorney predicted?

23          A.    Yes, sir, I do.

24          Q.    Do you understand that after it's been determined  
25 what guideline applies in the case, the Judge has the

1 authority in some circumstances to impose a sentence that's  
2 more severe or less severe than the sentence called for by  
3 the Guidelines?

4 A. Yes, sir.

5 Q. Do you understand that under some circumstances,  
6 you or the Government may have the right to appeal any  
7 sentence that I might impose?

8 A. Yes, I do, Your Honor.

9 Q. Do you understand that parole has been abolished,  
10 and if you are sentenced to prison, you will not be released  
11 on parole?

12 A. Yes, sir.

13 Q. Mr. Akerly, has anyone threatened you or anybody  
14 else or in any way forced you to plead guilty in this case?

15 A. No, sir, they haven't.

16 THE COURT: Mr. Ambrose, has he made any  
17 confession to the police or other representatives of the  
18 Government concerning this matter?

19 MR. AMBROSE: Not that I'm aware.

20 THE COURT: Do you agree with that, Miss Sanner?

21 MS. SANNER: Yes, Your Honor.

22 THE COURT: Has there been a plea agreement  
23 entered into here?

24 MS. SANNER: There is no plea agreement in this  
25 case.

1 MR. AMBROSE: This is an open case, Your Honor.

2 BY THE COURT:

3 Q. Do you understand, Mr. Akerly, that any  
4 recommendation of sentence that might have been agreed to by  
5 your lawyer and the prosecution or any agreement by the  
6 Government not to oppose your attorney's requested sentence  
7 is not binding on me, and you might, on the basis of your  
8 guilty plea, receive up to the maximum sentence permitted by  
9 law?

10 A. Yes, sir, I do understand.

11 Q. Do you understand that if I choose not to impose  
12 the sentence that might be recommended by the Government or  
13 by your lawyer and impose a more severe sentence, you will  
14 not be entitled to withdraw your guilty plea?

15 A. Yes, sir, I do.

16 Q. Has anyone made any prediction or promise to you  
17 as to what the sentence will be?

18 A. No, sir.

19 Q. Have any out-of-court promises, representations,  
20 or agreements been made which require you to respond  
21 untruthfully to any of my questions? For instance, has  
22 anyone told you to tell me that no promise of leniency was  
23 made when, in fact, a promise was so made?

24 A. No, sir.

25 Q. Do you understand that you may not at a later date

1 after today claim there were any promises, representations,  
2 agreements, understandings, or threats made by any person  
3 that motivated or caused you to enter this plea, other than  
4 those that you had the opportunity to tell me about here and  
5 now in open court?

6 A. Yes, I understand.

7 Q. Do you understand that no one can make promises  
8 for me as to how I should dispose of the case?

9 A. Yes, sir, I do.

10 Q. Has anyone promised or predicted leniency with  
11 respect to any sentence I might impose?

12 A. No, sir.

13 Q. This is very important, because if anyone has  
14 predicted or promised leniency, I'm putting you on notice  
15 that any representation they may have made is not binding on  
16 me, and I will sentence you according to my own conscience  
17 and following the law.

18 Do you understand that?

19 A. Yes, sir, I do.

20 Q. What made you decide to plead guilty, Mr. Akerly?

21 A. I possessed the firearms.

22 Q. Did you discuss pleading with Mr. Ambrose?

23 A. Yes, sir.

24 THE COURT: I'm going to ask Miss Sanner now to  
25 tell me what she expects the Government to be able to prove

1 here, and then I'm going to ask you and Mr. Ambrose if you  
2 agree with her statement.

3 MS. SANNER: Your Honor, if this case had  
4 proceeded to trial, the United States would present evidence  
5 and testimony showing that the Defendant is a convicted  
6 felon for drug violations and was discovered in possession  
7 of firearms listed in the indictment on February 28th, 2005.

8 Testimony from the Pennsylvania State Police  
9 would show that on February 28th, 2005, officers responded  
10 to a 911 call that was made from Mr. Akerly's home. Upon  
11 their arrival, the police learned that Mr. Akerly's home had  
12 been invaded by individuals, that an altercation had ensued,  
13 and that the individuals ultimately fled his home on foot  
14 and that Mr. Akerly discharged a Winchester Model 1300  
15 shotgun in their direction. Pennsylvania State Police saw  
16 the shotgun and spent ammunition, and they obtained a search  
17 warrant to process Mr. Akerly's home as a crime scene.  
18 During the search, three additional firearms listed in the  
19 indictment were found.

20 Testimony from an agent from the Bureau of  
21 Alcohol, Tobacco, Firearms, and Explosives would show that  
22 the firearms moved in or affected interstate commerce. And  
23 the records custodian would testify that the Defendant has  
24 been convicted of a crime punishable by a term of  
25 imprisonment exceeding one year.

1                   And that would be the sum of the Government's  
2 evidence at trial.

3                   THE COURT: Is that a fair statement of what  
4 happened here, Mr. Akerly?

5                   MR. AMBROSE: Your Honor, if the Court please,  
6 there was a home invasion by five individuals of his house,  
7 and they were charged with burglary, robbery, and aggravated  
8 assault --

9                   THE COURT: They got the people that did that.

10                  MR. AMBROSE: They have all been convicted and  
11 sentenced by Judge Trucilla to 10 to 20 years. His  
12 girlfriend had called 911, and when the State Police came  
13 in, of course, at some point in time they did a record  
14 check. And then, of course, the shotgun was used to get the  
15 people out of the house. And then, of course, ATF. He was  
16 convicted of possession of marijuana in State Court, and as  
17 the Court knows, you call it a misdemeanor in State Court,  
18 but it's a felony in Federal Court if it's greater than a  
19 year. And he was in possession of the guns. We make no  
20 bones about it. Under federal law, obviously, a person's  
21 belief of what the law is, is not what's relevant. It's  
22 more a statutory crime.

23                  THE COURT: Have they summarized the facts  
24 regarding the incident and the reason for the call for the  
25 State Police?

1 MR. AKERLY: Yes, sir.

2 THE COURT: But you do agree that you possessed  
3 those weapons?

4 MR. AKERLY: Yes, sir, I did.

5 MR. AMBROSE: And he was subpoenaed to testify in  
6 THE proceedings regarding these other individuals in State  
7 Court, Your Honor.

8 THE COURT: Reviewing all these things that we  
9 have discussed here today, is it still your wish to enter a  
10 plea of guilty and waive your right to a trial by jury?

11 MR. AKERLY: Yes, it is.

12 THE COURT: Mr. Ambrose, from the facts that he  
13 has told you, do you concur in his plea of guilty?

14 MR. AMBROSE: I do, Your Honor. Unfortunately, I  
15 disagree with the law, but there's nothing I can do about  
16 it. I mean, the case law is pretty clear that the  
17 Government does not have to prove, obviously, that he knew  
18 what the law was. That he was in violation of the law.

19 THE COURT: Do you know of any reason he should  
20 not plead guilty?

21 MR. AMBROSE: I know of none, Your Honor.

22 THE COURT: Do you have any question to ask me,  
23 Mr. Akerly?

24 MR. AKERLY: No, sir.

25 THE COURT: Since you do acknowledge that you are,



1 in fact, guilty of the charge based in the indictment, you  
2 know your right to a trial, what the maximum possible  
3 punishment is, and that you are voluntarily pleading guilty,  
4 I will accept your guilty plea and enter a judgment of  
5 guilty on your plea, and I'll ask you to sign the  
6 acknowledgment.

7 (Discussion held off the record.)

8 THE COURT: We note that Mr. Akerly has signed the  
9 endorsement, indicating he's withdrawing his plea of not  
10 guilty previously entered, and is now pleading guilty. He  
11 signed that, and Mr. Ambrose has witnessed his signature.

12 I'm going to order a presentence report, and  
13 Mr. Condi over at the table, he's the presentence -- he's  
14 the officer who will be preparing the presentence report.  
15 I'm sure Mr. Ambrose will agree that you should use your  
16 best efforts to cooperate with him in furnishing information  
17 for that report, because what the report says is going to be  
18 important as to my ultimate decision as to what the sentence  
19 will be. You and Mr. Ambrose, of course, will have the  
20 right to examine that report and comment on it at the time  
21 of sentencing.

22 I have been given a sentencing date of  
23 March 14th, 2006 at 1:30 p.m. March 14th, 2006 at 1:30 p.m.

24 Does the Government have any objection to  
25 present bond being continued?

1 MS. SANNER: No objection, Your Honor.

2 THE COURT: So you understand, then, that  
3 sentencing will be on March 14th?

4 MR. AKERLY: Yes, sir.

5 THE COURT: Okay.

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7 (Hearing concluded at 2:52 p.m.)

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